

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Christopher Dekota Smith,)	C/A No.: 4:10-2704-RBH-SVH
)	
Plaintiff,)	
)	
vs.)	
)	REPORT AND RECOMMENDATION
William Hester, Mark Strickland, and)	
Emmanuel Graham,)	
)	
Defendants.)	

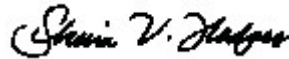
Plaintiff Christopher Dekota Smith is an inmate in the custody of the Florence County Detention Center (“FCDC”), and he has filed this action pro se, asserting claims under 28 U.S.C. § 1983 for violations of his constitutional rights. Before the court is Plaintiff’s Motion to Dismiss filed on June 27, 2011 [Entry #46]. In his motion, Plaintiff requests the court dismiss this action without prejudice because he believes he does not have the knowledge or resources to prosecute the case. Defendants have not opposed the motion.

The court construes Plaintiff’s motion as a motion for voluntary dismissal without prejudice pursuant to Fed. R. Civ. P. 41(a)(2), which provides in pertinent part, “[e]xcept as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff’s request only by court order, on terms that the court considers proper.” Fed. R. Civ. P. 41(a)(2). This rule permits a plaintiff to dismiss his case without prejudice, but requires that the plaintiff obtain court approval. *See Marex Titanic, Inc. v. Wrecked & Abandoned Vessel*, 2 F.3d 544, 546 (4th Cir. 1993). The main purpose of the rule is to freely permit voluntary

dismissals while safeguarding the non-movant from prejudice. *Davis v. USX Corp.*, 819 F.2d 1270, 1273 (4th Cir. 1987).

Generally, a plaintiff's motion for voluntary dismissal without prejudice under Rule 41(a)(2) should not be denied unless the defendant will suffer prejudice. *See Andes v. Versant Corp.*, 788 F.2d 1033, 1036 (4th Cir. 1986). There is no indication here that Defendants would be prejudiced by the dismissal, and Defendants have not opposed the motion. Therefore, because no evidence of prejudice has been presented and in light of Defendants' lack of opposition, the undersigned recommends Plaintiff's motion for voluntary dismissal be granted [Entry #46] and this case be dismissed without prejudice.

IT IS SO RECOMMENDED.



July 26, 2011
Florence, South Carolina

Shiva V. Hodges
United States Magistrate Judge

**The parties are directed to note the important information in the attached
“Notice of Right to File Objections to Report and Recommendation.”**